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December 15, 2017

Via E-Mail to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 17-33 (Arbitration – Firm or Associated Person is Inactive) dated October 18, 2017 (“Notice 17-33”)

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on Notice 17-33.² Notice 17-33 requests comment on FINRA’s proposal to expand a customer’s options if a firm or associated person becomes inactive before a claim is filed or during a pending arbitration. Under these circumstances, the proposal would also allow customers to (i) withdraw a claim, (ii) amend pleadings, (iii) postpone hearings, (iv) invoke expedited default proceedings, (v) and receive a refund of filing fees.

SIFMA is generally supportive of these proposed changes as an appropriate expansion of existing customer protections when dealing with firms and associated persons who are no longer in business either at the time the claim is filed or at the time of the award. We offer the following recommendations, however, to enhance the fairness and completeness of the proposal.

Amending Pleadings

We generally support allowing a customer claimant to amend his or her pleadings after learning that a respondent firm or associated person has become inactive. Such amendments, however, have the potential to prejudice other named respondent firms and/or associated persons who remain active in the

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Notice 17-33, available at <https://www.finra.org/industry/notices/17-33>.

case. In fairness, such respondent firms and associated persons should retain the right to review the proposed amended pleading, respond in writing, and if there is a claim of prejudice, obtain a ruling on such claim from the panel.

Applicability to Intra-Industry Cases

The stated purpose of the proposal is to facilitate “dealing with those member firms or associated persons who are responsible for most unpaid awards – firms and associated persons who are no longer in business either at the time the claim is filed or at the time of the award.”³ While acknowledging that unpaid awards occur in *both* customer cases and intra-industry cases, FINRA nevertheless states that it is limiting its proposed amendments to customer cases.⁴

FINRA offers no reason for limiting the proposal to customer cases. In fact, we find no good reason to so limit the proposal, but just cause to expand it to include intra-industry cases. All of the arguments and justifications that FINRA makes in favor of expanding the options available to a customer claimant when dealing with those member firms or associated persons who are responsible for most unpaid awards apply *equally* to industry claimants when dealing with those same member firms and associated persons.⁵ We urge FINRA – in fairness to intra-industry respondents and to more completely address the issue of unpaid arbitration awards – to expand the proposal to intra-industry cases

Thank you for the opportunity to share the foregoing recommendations to help address the important issue of unpaid arbitration awards. If you have any questions or would like to further discuss these issues, please contact the undersigned.

Sincerely,



Kevin M. Carroll
Managing Director and
Associate General Counsel

cc: ***via e-mail to:***
Robert L.D. Colby, Chief Legal Officer, FINRA
Richard W. Berry, Executive Vice President and Director FINRA-DR

³ Notice 17-33, at 2, 6.

⁴ Notice 17-33, at fn 3.

⁵ Notably, in a June 2017 comment letter to FINRA, we similarly observed that all of the arguments that FINRA made in favor of eliminating the inability to pay defense against customer claimants apply equally to industry claimants and thus, FINRA should amend Rule 9554 to preclude respondents from raising the inability-to-pay defense in intra-industry cases. Doing so would also have the desirable effect of reducing the number of unpaid arbitration awards. See SIFMA comment to FINRA (June 2, 2017), available at <https://www.sifma.org/resources/submissions/sifma-submits-comments-on-the-transparency-of-finras-dispute-resolution-program/>.